

June 28, 1892.

Ontario.]

## TOWNSHIP OF SOMBRA V. TOWN OF CHATHAM.

*Municipal corporation—Drainage work—Non-completion—Mandamus—Ontario Mun. Act (R.S.O., 1887, c. 184, s. 583—Ont. Jud. Act (R.S.O., 1887, c. 44.)*

The corporation of the town of C., by by-law, undertook the execution of a scheme of drainage on a road between the town of C. and the township of S., pursuant to a report of an engineer appointed to examine the land proposed to be drained. A surveyor was appointed to execute the work by letting it out under contract, which he did, but the contractors were unable to carry it out, and abandoned it. The work was then let in parcels to different contractors. An action was brought against the town of C. by the township of S. and one M., a landowner whose land was alleged to have been injured by flowing caused by the wrongful and negligent manner in which the drainage work was done. The plaintiffs claimed that the work was never fully executed, and each asked for a *mandamus* to compel the defendants to complete it according to the plans and specifications adopted by the by-law. M. also claimed damages for the injury to his land.

The trial resulted in a judgment for plaintiffs for all the relief claimed, the decree directing that the work be completed according to the plans and specifications with proper and sufficient outlets at both ends of the drain to carry off all the water entering the same from time to time, the same to be done at the cost of the defendants. To M. was awarded \$150 damages. The Court of Appeal (18 Ont. App. R. 252) reversed this judgment so far as the township of S. was concerned, and dismissed the action of the township. The judgment in favour of M. was affirmed. The plaintiffs appealed and the defendants gave notice of cross-appeal against the judgment in favor of M.

*Held*, reversing the judgment of the Court of Appeal, Taschereau, J., dissenting, and Patterson, J., with hesitation, that the township of S. was entitled to retain the *mandamus* or mandatory injunction granted by the original decree, and that it was entitled to such relief, irrespective of s. 583 of the Mun. Act (R. S.O. 1887, c. 184), under the Ont. Jud. Act (R.S.O. 1887, c. 44); the decree to be varied by striking out the direction that the work should be done at the cost of defendants, which is only